



In the Matter of the Appeal of)
)
COLBY W. AND VIRGINIA L. JOHNSON)

Appearances:

For Appellants: Gregory E. Lawrence, Jr.
Tax Consultant

For Respondent: Carl G. Knopke
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Colby W. and Virginia L. Johnson against a proposed assessment of additional personal income tax in the amount of \$129.95 for the year 1977.

Appeal of Colby W. and Virginia Johnson

The issue for determination is whether appellants are entitled to their claimed solar energy credit for 1977 without reduction for the 'comparable federal credit.

In July 1977, appellants Colby W. and Virginia L. Johnson installed a solar heated domestic hot water system in their home at a cost of \$1,044. On their joint tax return for that year, appellants reported an eligibility for a solar energy credit in the amount of \$574, or approximately 55 percent of the cost of the solar heating system. However, they claimed the credit only to the extent of their \$391 tax liability for 1977.

Respondent examined the return and eventually allowed the credit, but reduced it in accordance with section 17052.5, subdivision (j), of the 1977 Revenue and Taxation Code. This provision limited the combined credit that a taxpayer could receive from both state and federal governments to 55 percent of the cost of the system. Respondent determined that appellants were entitled to a federal credit in the amount of \$313.20. Since the limit for the combined credit was 55 percent of the cost, or \$574.20, the state credit could not exceed \$261.00. Respondent made additional arithmetical adjustments in appellants' return, and issued a proposed assessment equal to the difference between the reduced state credit and their 1977 tax liability before the credit.

Appellants contend on appeal that **no** federal credit was allowed for 1977 and, therefore, there is no reason to reduce the state credit for that year. Appellants add that they did not claim a federal credit, and did not carry the unused excess of their 1977 state credit forward to 1978.

Revenue and Taxation Code section 17052.5 provides, in part, for a credit not exceeding \$3,000, and representing 55 percent of the cost of a solar energy system that a taxpayer installs on his or her premises in California. (Rev. & Tax. Code, § 17052.5, subd. (a)(2).) Under this statute, appellants are eligible for a credit of \$574.20, or 55 percent of the cost of their solar heated water system. Respondent determined that they may take this credit in 1977, the year they installed the system.

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Subdivision (j) of the statute, as it read in 1977, stated:

Subject to the dollar limitations provided in paragraphs (2) and (3) of subdivision (a), if a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided by this section shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provisions of subdivision (f).

-Thus, if the installation of an eligible solar energy system entitles a taxpayer to both a federal and a state credit, the state credit must be decreased so that both credits together do not exceed 55 percent of the taxpayer's costs.

In 1978, Congress enacted Internal Revenue Code section 44C, which in part allows a credit for qualified energy saving expenditures made by the taxpayer on or after April 20, 1977, in the taxpayer's principal residence. (Int. Rev. Code of 1954, § 44C(a).) For energy systems such as appellants', the credit amounted to 30 percent of expenditures up to \$2,000 and 20 percent of expenditures between \$2,000 and \$10,000. (Former Int. Rev. Code of 1954, § 44C(b)(2).) It appears that appellants, who installed a \$1,044 solar energy system in July 1977, are eligible for a \$313.20 federal credit, which represents 30 percent of the cost of the system. That being so, then their original state credit of \$574.20 must be reduced (under former section 17052.5, subdivision (j)) by the amount of the federal credit, leaving them with a maximum possible state credit of \$261.00.

Appellants correctly point out that the federal statute does not allow a credit against 1977 tax liability. It allows a credit for qualified expenditures made after April 19, 1977, but requires that the credit be applied only to tax years beginning on or after January 1, 1978. (Former Int. Rev. Code of 1954, § 44C(d)(4), now § 44C(d)(5); Treas. Reg. § 1.44C-3(b).) Appellants argue that, since no federal credit was allowed against 1977 tax liability, their original 1977 state credit of \$574.20 need not be reduced.

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We believe that appellants have misconstrued former subdivision (j) of section 17052.5. Subdivision (j) mandated a reduction in the state credit permitted under (a) (2) "if a federal income tax credit . . . is allowed for a solar energy system as defined in this section" The reduction in the state credit does not depend upon whether the federal credit is allowed for the same year that the taxpayer took the state credit. Rather, it depends upon whether the federal credit is permitted for the same energy system for which the taxpayer took the state credit.

Since appellants are entitled to claim a federal energy credit in 1978 for their hot water system, they must reduce their 1977 state solar energy credit so that the two credits combined do not exceed 55 percent of the system's cost. (See Appeal of Thomas S. and Sarah L. Wallace, Cal. St. Bd. of Equal., June 23, 1981.) We must therefore sustain respondent's action in this matter.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Colby W. and Virginia L. Johnson against a proposed assessment of additional personal income tax in the amount of \$129.95 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of March , 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

_____, Chairman
George R. Reilly, Member
Ernest J. Dronenburg, Jr., Member
Richard Nevins, Member
_____, Member